

Keith Y. Boyd, OSB #760701
keith@boydlegal.net
The Law Offices of Keith Y. Boyd
724 S. Central Ave., Suite 106
Medford, OR 97501
Telephone: 541-973-2422
Facsimile: 541-973-2426
Of Attorneys for Debtor in Possession

Robert Vanden Bos, OSB #781002
bob@vbcattorneys.com
Douglas Ricks, OSB #044026
doug@vbcattorneys.com
Vanden Bos & Chapman LLP
319 SW Washington Street, Suite 520
Portland, OR 97219
Telephone: 503-241-4869
Facsimile: 503-241-3731
Of Attorneys for Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

Carleton Farms, a partnership,

Debtor.

Case No. 18-61140-tmr11

MOTION FOR TURNOVER
(CFO Solutions, LLC, Receiver)

Carleton Farms, the debtor in possession (“DIP”), hereby moves the Court for an order requiring CFO Solutions, LLC, state court appointed receiver, to turnover to the DIP all property of the debtor in his possession, pursuant to 11 U.S.C. § 543(a), and to account to the United States Trustee pursuant to FRBP 6002(a).

BACKGROUND

1. On April 12, 2018, this case was commenced by the filing of a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The DIP has made demand under 11 U.S.C.

§543(a) on CFO Solutions, LLC, the receiver appointed by the Klamath County Circuit Court in case number 17CV56444, entitled *Umpqua Holdings Corporation, dba Umpqua Bank, and Oregon chartered bank, Plaintiff, v. Carleton Farms, an unregistered Oregon general partnership; Richmond James Carleton; James Alfred Carleton; Gregory George Carleton; Carleton Farms, LLC, an Oregon limited liability company; James Carleton and Gregory Carleton, successor trustees of the Alfred C. Carleton and Helen A. Carleton Trust dated July 5, 1985; Gregory G. Carleton and Cyndee O. Smith-Carleton, Trustees of the Carleton Family Trust, dated October 27, 2016; AGCO Finance LLC, a Delaware limited liability company; Deere & Company, a Delaware corporation; Western Milling, LLC, a California limited liability company; and Basin Fertilizer & Chemical Co., LLC, an Oregon limited liability company, Defendants*; to turnover to the DIP all property of the debtor described in the attached Exhibit A, as well as all records relating thereto. When the receiver complies with the turnover demand and the designated assets described in Exhibit A are turned over to the DIP, the DIP will require an order allowing the use of cash collateral.

2. Prior to the filing of the debtor's petition, Umpqua Bank ("Secured Lender") was granted trust deeds and assignments of rent in the real property and personal property described in Exhibit A ("Collateral"). Umpqua Bank is owed approximately \$17,501,627.30 at the time its foreclosure complaint was filed. The Debtor has valued the assets it seeks turnover at \$3,860,000. Therefore, Umpqua Bank is undersecured.

3. On or about February 2, 2018, the debtor consented to the appointment of the receiver and an Order Appointing Receiver (Order) was entered by the Klamath County, Oregon Circuit Court. A copy of the Order is attached hereto as Exhibit B. The receiver has been in

possession of all of the assets of the debtor since that time. The statutory basis for appointment of the receiver was the commencement of a judicial foreclosure by Secured Lender. The effect of such action would be to eliminate any opportunity for the debtor to pay its other creditors because there is no question that the value of the assets is less than the total debt owed to Secured Lender. This case was filed to stop the foreclosure and allow the debtor to recover the property it needs to reinstate its income producing ability so that it will be able to pay something to all of its creditors.

5. Since the filing of this case, the DIP has attempted to obtain the receiver's cooperation to turnover the assets. The receiver indicated it would not turnover the assets.

JURISDICTION

6. This Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334. Venue of this case is properly in this District under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(E). The statutory predicate for the relief requested is 11 U.S.C. § 543(a).

BACKGROUND

7. The Debtor has been a farming partnership in the Klamath Basin for many years. Most recently, it encountered severe economic difficulties resulting from the decision of the partners to aggressively pursue the cultivation of organic crops. In order to pursue the expansion of its business into the organic crop market, it substantially increased its credit facility with Umpqua Bank, which was willingly supported by Umpqua Bank. This decision turned out to be unprofitable due to several factors, the most important of which was the depression of prices for organic products. Due to the substantially higher production costs, the depression in prices resulted in large losses from the sale of the organic products. The partners of the debtor are

keenly aware that the volatility of the organic products market is to be avoided and their current farming plans will include only those conventional crops that can be produced predictably and profitably..

8. The debtor has identified the land and equipment that it will need to farm profitably this year and into the future. It does not seek the turnover of equipment that is specifically designed and used for the production of organic crops. By value, the debtor seeks turnover of about one-half of the equipment now held by the receiver. The remaining equipment should be liquidated by the receiver and the proceeds paid to Umpqua Bank to apply to its secured claim. In addition to the return of equipment, the debtor seeks turnover of all of its real estate, which includes substantial improvements consisting of a home, office, barns, hay storage, and potato processing facilities, among others. The debtor needs all of the assets described in this motion in order to operate profitably.

9. The debtor in possession has filed its Motion for Authority to Use Cash Collateral (cash collateral motion) contemporaneously with this motion. The cash collateral motion sets forth the projected costs and expenses to produce crops in this 2018 farm year, as well as the anticipated yields from each property to be farmed. A reasonable profit is expected and justifies the turnover of the assets to the debtor in possession.

10. The debtor previously consented to the appointment of the receiver because the partners believed that the debtor would secure sufficient sums from third party sources to purchase the assets from the receiver that it now seeks to obtain by turnover. At no time did the debtor plan to cease farming. It intended to recover its assets from the receivership by paying to the receiver, for the benefit of Umpqua Bank, the fair market value of those assets. The debtor was unsuccessful obtaining the funds necessary to purchase the assets from the receiver.

Therefore, the only means to recover the assets and continue its farming operation to pay something to all of its creditors is to obtain turnover from the receiver pursuant to Section 543.

11. Without turnover, the perennial crops growing on a portion of the property, consisting of alfalfa hay, will not be irrigated as required and will therefore go “dormant”. The result of a lack of irrigation will be the loss of at least one cutting and most likely two cuttings of the alfalfa this year. In order to prevent this, the debtor estimates that irrigation must be started before May 1.

12. Without turnover, the debtor will not have access to the land to prepare it for planting this year. A delay in preparing the land for planting will, at a minimum, shorting the growing season for the numerous crops to be planted. At worst, the debtor will not be able to plant crops in time to obtain any yield at all. The debtor needs access to the land no later than April 20, 2018 to be able to properly prepare the ground for planting.

13. Without turnover, the debtor will not have access to the equipment it requires to prepare potato seed for planting this year. The debtor needs access to that equipment no later than April 20 in order to be prepare sufficient potato seed to plant the volume of potatoes to meet its obligations on the contracts it expects to obtain this crop year.

BASIS OF REQUESTED RELIEF

14. 11 U.S.C. § 543(a) requires the receiver to turnover all assets of the debtor to the DIP. This court, in *In re Orchards Village Investments, LLC*, 450 B.R. 341 (Bankr. Or. 2009), set out three factors the court is to consider if turnover is opposed; “(1) whether there will be sufficient income to fund a successful reorganization; (2) whether the debtor will use the property for the benefit of its creditors; and (3) whether there has been mismanagement by the debtor.” Based on the information set forth above, all three factors weigh in favor of turnover.

WHEREFORE, the DIP requests that this Court order the receiver to turnover to the DIP all assets of the debtor in his possession.

DATED this 12th day of April, 2018.

THE LAW OFFICES OF KEITH Y. BOYD

By: /s/ Keith Y. Boyd
Keith Y. Boyd, OSB #760701
Of Attorneys for Debtor in Possession

Trucks	Plate#	Vin#	
2005 Peterbuilt	F164879	1XP5D49X75D865015	
1992 Frght	F173670	1FUYYDDYBXNP517706	
1993 Frght	F167792	1FUYY3LYB6PP426643	
1993 Frght	F164297	2FUYYDXB2PV499745	
1992 KW	F174114	1XKADR9X2NS568859	
1988 KW	F167095	1XKAD29X3JS502810	
1992 Peterbuilt	F167094	1XPCD69XOND314329	
1999 Frght	F163294	1FUYNMDB9XPB12638	Condon
2000 Frght	F164298	1FUYNMDB9YPF46866	Condon
1987 Frght-Cabover	F131470	1FUEYDYB9HP292464	Dick's Blue
1973 Frght-Cabover	F147999	CA213HM074505	
1979 26' Sem TRL		7L93685006	Hay Trailers-Blue
1979 24' Sem TRL		7L93684007	Hay Trailers-Blue
1999 Lowboy		1W1AEK6G9XK230808	
Van			
1993 WESCO	HU70037	1WRSD3281PW934292	Trailer
1993 WESCO	HU70038	1WRFD3281PW934293	Trailer
2006 CORNHUSKER		1192C422X60007868	Trailer
1981 FreeHauf		IH4V04522BJ025825	Trailer
2004 TIMPT	HS90579	1TDH400264B104947	Trailer
1984 Frght	F157622	2FUPYDYB7EV236615	Fert Truck
1975 INTL 1600	NL67606	10662EHA28050	Feed Truck
Hay Equipment-			
1 Hay Steamer			
1 NH Swather			
1 2006 Road Runner			
1 2007 Road Runner			
2 2027 - Rake			
2 G 2			
1 Hyster			
1 NH Bale Wagon			
2 Fluffer			
1 Feed Wagon			
1 Lease Baler			
Small Balers			
1 JD Swather			
Pickups-			
2016 Ford F350		1FT8W3BT5GEB78025	Jim's White Pickup
2014 Ford F350	F169337	1FT8W3BT8EEB19158	Greg's Silver Pickup
2008 Ford F350	F159941	1FTWW31R88ED47694	Greg's Maroon Pickup
2011 Ford F350	197FGR	1FT7W3BT7BEC41257	Jim's Tan Pickup

2003 Ford F350	282EJJ	1FTSW31P63EB38105	Dick's White Pickup
2011 Chevy 1500	220FGR	1GCNKPEX6BZ440320	
2011 Chevy 1500	221FGR	1GCNKPEX6BZ297045	
2011 Chevy 1500	222FGR	1GCNKPEX3BZ373675	
2012 Chevy 1500	223FGR	1GCNKPEX0CZ159938	
2005 Ford		1FTSX21P35EC67073	
2007 Ford F250	891 CYH	1FTSW21P77EA35937	
2002 Ford F350	T552209	1FTSX31F02ED42403	Danny B
1990 GMC	ZEA 096	1GDJC34N4LE544958	Service Pickup
Blue Chevy Flatbed			

Tractors-

8420
8345
8330
8130
7800
6420
7400
6110
2 2840
1086
986

Implements-

Falc Chopper
Paritil
JD Ripper
IH Chisel
IH Chisel
Disc
Rototiller
Spreader
Misc Harrows
Spray Tanks

Pipe-

Aluminum 3 x 40
Mainline
Plastic 3 x 30
Trailers

Potato-

2 Lockwood Windrower
1 Tub 600 Spudnik
1 Piler
1 Spudnik 30" Piler
6 Flal Conveyer
1 Short Conveyer
1 Tale Scope Conveyer

- 1 Seed Cutter
- 1 Small Tub
- 1 Planter-New
- 1 Cultivator
- 1 Tare Elevator
- 1 Scoopy
- 1 Scraper
- 1 Spreader

Misc-

Shop Tools & Supplies

All Parts & Fuel Tanks

All GPS Equipment

Electrical Cords

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

UMPQUA HOLDINGS CORPORATION, dba
UMPQUA BANK, an Oregon chartered bank,

Case No. 17CV56444

Plaintiff,

v.

CARLETON FARMS, an unregistered Oregon
general partnership; RICHMOND JAMES
CARLETON; JAMES ALFRED CARLETON;
GREGORY GEORGE CARLETON;
CARLETON FARMS, LLC, an Oregon limited
liability company; JAMES CARLETON and
GREGORY CARLETON, successor trustees of
the Alfred C. Carleton and Helen A. Carleton
Trust dated July 25, 1985; GREGORY G.
CARLETON and CYNDEE O. SMITH-
CARLETON, Trustees of the Carleton Family
Trust, dated October 27, 2016; AGCO
FINANCE LLC, a Delaware limited liability
company; DEERE & COMPANY, a Delaware
corporation; WESTERN MILLING, LLC, a
California limited liability company; and
BASIN FERTILIZER & CHEMICAL CO.,
LLC, an Oregon limited liability company,

ORDER UPON STIPULATION APPOINTING
CFO SOLUTIONS, LLC AS RECEIVER
OVER THE “BANK LOAN COLLATERAL,”
AND ISSUING A PRELIMINARY
INJUNCTION

Defendants.

This matter came before the Court on Plaintiff Umpqua Holdings Corporation, dba
Umpqua Bank (“**Bank**” or “**Plaintiff**”) *Combined Motion and Memorandum in Support for (A)*
Appointment of a Receiver, (B) Issuance of a Temporary Restraining Order, and (C) the
*Subsequent Issuance of a Preliminary Injunction (the “**Motion**”).* In the Motion Bank requests,

1 among other relief, the entry of an Order appointing CFO Solutions, LLC, a Utah limited liability
2 company dba Advanced CFO (“**Advanced CFO**”), as the receiver for the “**Bank Loan**
3 **Collateral.**”

4 The “**Bank Loan Collateral**” is more particularly described as follows:

5 1. The following personal property assets owned, individually or collectively or in
6 whole or in part, by any of Carleton Farms, Richmond Carleton, James Carleton, Gregory
7 Carleton, and Carleton Farms, LLC (collectively, the “**Carleton Defendants**”):

8 (a) all accounts, accounts receivable, contract rights, documents, documents of
9 title, payment intangibles, investment property, chattel paper, instruments, and checking, savings
10 and all other deposit accounts;

11 (b) all inventory;

12 (c) all equipment;

13 (d) all fixtures;

14 (e) all farm products, including crops grown, growing or to be grown, livestock
15 born or unborn, supplies used or produced in the Carleton Defendants’ farming operation, and
16 products of crops and livestock in their unmanufactured state;

17 (f) all general intangibles, including all intellectual property ;

18 (g) all deposit accounts, including any operating account at Umpqua Bank.;

19 (h) all investment property now or hereafter acquired;

20 (i) all proceeds of any crop insurance, price support payment or other
21 government program;

22 (j) accessions, attachments and other additions to the Bank Loan Collateral;

23 (k) substitutes or replacements for any of the Bank Loan Collateral, all
24 proceeds, products, rents and profits of any of the Bank Loan Collateral, all rights under warranties

1 and insurance contracts covering the Bank Loan Collateral, and any causes of actions relating to
2 the Bank Loan Collateral; and

3 (l) books and records pertaining to any of the Bank Loan Collateral, including
4 but not limited to any computer-readable memory and any computer hardware and software
5 necessary to process such memory; and

6 The real property, fixtures and improvements and related property, including leases and
7 rents described in the following recorded documents:

8 (a) That certain Deed of Trust dated May 2, 2016 and recorded in the Official
9 Records of Klamath County, Oregon on May 5, 2016, as Instrument No. 2016-004564;

10 (b) That certain Assignment of Rents dated May 2, 2016 and recorded in the
11 Official Records of Klamath County, Oregon on May 5, 2016, as Instrument No. 2016-004565;

12 (c) Two separate Agricultural Security Agreements dated May 2, 2016,
13 between Carleton Farms, Richmond Carleton, James Carleton, and Gregory Carleton and Bank
14 with the security interests described therein perfected by filing one or more UCC Financing
15 Statements with the Oregon Secretary of State's office and by recording a UCC Financing
16 Statement relative to the certain personal property collateral described therein in the Official
17 Records of Klamath County, Oregon on May 5, 2016, as Instrument No. 2016-04566, which was
18 subsequently amended pursuant to the terms of a UCC Financing Statement recorded in the
19 Official Records of Klamath County, Oregon on April 13, 2017, as Instrument No. 2017-003855;

20 (d) That certain Modification of Deed of Trust dated June 15, 2016 and
21 recorded in the Official Records of Klamath County, Oregon on July 1, 2016, as Instrument No.
22 2016-006974;

23 (e) That certain Second Modification of Deed of Trust dated June 26, 2017 and
24 recorded in the Official Records of Klamath County, Oregon on August 3, 2017, as Instrument No.
2017-008754;

1 (f) That certain Modification of Assignment of Rents dated June 26, 2017 and
2 recorded in the Official Records of Klamath County, Oregon on August 3, 2017, as
3 Instrument No. 2017-008755; and

4 (g) That certain Third Modification of Deed of Trust dated June 26, 2017 and
5 recorded in the Official Records of Klamath County, Oregon on October 6, 2017, as Instrument
6 No. 2017-011381.

7
8 2. As part of the motion, Bank also has requested that the Court enter a temporary
9 restraining order and subsequent preliminary injunction in aid of the Receivership enjoining and
10 restraining the Carleton Defendants, and each of them, and their agents, servants, employees,
11 attorneys, and other persons and entities acting in concert or participation with them, or any of
12 them, from, directly or indirectly, transferring, selling, leasing, disposing of, encumbering,
13 injuring, converting, gifting or otherwise interfering with the Bank Loan Collateral without Bank's
14 express prior written consent and the written consent of the Receiver, or further Order of the
15 Court.

16 Based upon the Motion, the Declaration Matthew R. McKinlay, a member and authorized
17 representative of the proposed Receiver, the other pleadings, papers and exhibits submitted in
18 support thereof, and the arguments and evidence (if any) presented in support of the Motion, and
19 good cause appearing therefore, the Court makes the following findings:
20

21 1. Good and sufficient grounds exist to grant the Motion and appoint a receiver over
22 the Bank Loan Collateral (exclusive of Parcel 9 described in the Real Estate Loan Trust Deed as
23 more fully described as: Lot 16 in Block 2 of TRACT NO. 1099, ROLLING HILLS, according to
24 the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon), in that:

1 A. It appears that Bank holds a properly perfected lien on and security interest against
2 the Bank Loan Collateral;

3 B. The Bank Loan Collateral secures the performance and payment of substantial
4 monetary obligations owed by the Carleton Defendants to Bank;

5 C. The monetary obligations owed by the Carleton Defendants to Bank have been
6 accelerated and are payable in full, have not been paid, and are in default;

7 D. The loans evidenced by the five promissory notes described in the Motion are due
8 and payable in full, and events of default have occurred concerning those loans. Bank is owed
9 over \$17,000,000.00 on the five outstanding loans to the Carleton Defendants; Bank has made
10 demand for payment in full, and the outstanding balance of each loan remains due and owing.
11

12 E. The provisions of each security agreement executed by the Carleton Defendants
13 that secures all indebtedness owed by the Carleton Defendants to Bank provides that upon the
14 occurrence of an event of default, which has occurred here with respect to all five loans due and
15 owing to Bank, Bank may have a receiver appointed by any court of competent jurisdiction to take
16 possession of the Bank Loan Collateral described therein.
17

18 F. Similarly, the Real Estate Loan Trust Deed, as modified, states that upon the
19 occurrence of an event of default, which has occurred here with respect to all five loans to the
20 Carleton Defendants, Bank may have a receiver appointed by any court of competent jurisdiction
21 to take possession of the Bank Loan Collateral described therein.

22 G. The Bank Loan Collateral consists, in part, of perishable assets such as livestock
23 and other farm products, such as grains, potatoes and other commodities. Moreover, the Bank
24 Loan Collateral consists of numerous items of equipment that are depreciating in value, and which

1 also may not be insured or protected. The Bank Loan Collateral also consists of rents and account
2 receivables that can be easily diverted and siphoned off. In short, the Bank Loan Collateral is
3 perishable and is in danger of being lost, impaired, destroyed or dissipated without a receiver
4 being appointed to oversee it.

5 H. The Carleton Defendants appear to be insolvent. Under the Uniform Commercial
6 Code, as adopted in Oregon, “insolvent means: (i) having generally ceased to pay debts in the
7 ordinary course of business other than as a result of bona fide dispute; (ii) being unable to pay
8 debts as they become due; or (iii) being insolvent within the meaning of federal bankruptcy law.”
9 ORS 71.2010(w). Federal bankruptcy law, in turn, says insolvency includes a “financial condition
10 such that the sum of such entity’s debts is greater than all of such entity’s property, at a fair
11 valuation” 11 U.S.C. § 101(32).
12

13 Recent inspections and appraisals of the Bank Loan Collateral obtained by Bank indicate
14 that the aggregate market value of the Bank Loan Collateral is approximately \$13,398,350.00. The
15 Declaration of John Sugar filed in support of the Bank’s motion for the appointment of a receiver
16 states that the aggregate unpaid balance due from the Carleton Defendants to Bank under the five
17 promissory notes referenced in the Bank’s Amended Complaint is \$17,501,627.28 plus additional
18 accrued interest and costs. If Bank’s claim for conversion proves to be valid then the amount of
19 said indebtedness is increased to an even greater amount. In short, the information provided to the
20 Court indicates that the indebtedness owed by the Carleton Defendants to Bank exceeds the value
21 of the Bank Loan Collateral by approximately \$4,103,277.28.
22

23 2. The failure to appoint a receiver in this action over the Bank Loan Collateral could
24 result in the immediate and irreparable injury, loss, or damage to Bank’s interest in the Bank Loan

1 Collateral.

2 3. The appointment of a receiver over the Bank Loan Collateral is reasonably
3 necessary to preserve and protect the Bank Loan Collateral, and to insure that the Bank Loan
4 Collateral is not lost, dissipated, damaged or commingled.

5 5. Other potential remedies, including legal remedies, are either unavailable or
6 inadequate.

7 6. With respect to Bank's request for injunctive relief, injunctive relief is appropriate
8 in that:
9

10 A. Bank likely will suffer irreparable harm unless the Court grants Bank injunctive
11 relief;

12 B. The harm to the Defendants from being restrained or enjoined by the Court, if any,
13 is outweighed by the harm that Bank will incur if injunctive relief is not granted;

14 C. The injunctive relief requested by Bank is in the public interest; and

15 D. There is a substantial likelihood that Bank will prevail on (a) the merits of its
16 underlying claims against the Carleton Defendants, and (b) the merits of its request that the Court
17 appoint a receiver over the Bank Loan Collateral thereby also preserving the lien rights of other
18 named defendants in this action such as AGCO Finance LLC and Deere & Company who appear
19 to have a first priority purchase money security interest in various items of equipment referenced
20 in their UCC Financing Statements filed with the Oregon Secretary of State's office and Basin
21 Fertilizer & Chemical Co., LLC, who may have a first priority lien in certain farm products
22 referenced in one or more Notices of Claim of Agricultural Services Lien filed with the Oregon
23 Secretary of State's office.
24

1 10. Furthermore, it appears that Bank is entitled to the relief demanded in its Amended
2 Complaint and, without the entry of injunctive relief in this action; any judgment rendered by the
3 Court could be ineffectual.

4 11. Notice as required by Oregon law has been properly and timely given to all parties
5 entitled to such notice.

6 12. The Defendants have all consented to the appointment of a Receiver over the
7 Collateral as evidenced by their written consents on file with the Court in this action.

8
9 Based upon the foregoing findings of fact, and such other facts as the Court made upon the
10 records, which are incorporated herein by this reference, and pursuant to ORCP 79, 80, 82 and the
11 Receivership Code now in effect, it is hereby **ORDERED, ADJUDGED AND DECREED**, as
12 follows:

13 **1. APPOINTMENT OF RECEIVER.** Advanced CFO (“**Receiver**”), whose office
14 is located at 13601 West McMillan Road, Suite 102, PMB 320, Boise, Idaho 83713; Telephone:
15 (208) 724-2257; Facsimile: (208) 489-2501; email: mmckinlay@advancedcfo.com, shall be, and
16 hereby is, appointed as receiver over the Collateral, on the further terms and conditions of this
17 Order.

18 As a condition to the effectiveness of this Order and the Receiver’s appointment, the
19 Receiver shall post a Receiver’s bond in the amount of \$250,000.00. The Receiver is authorized
20 to act by and through its agents, representatives and employees. During the term of the Receiver’s
21 appointment, and until further order of the Court, the Collateral shall remain under the Court’s
22 exclusive jurisdiction. The Receiver is not interested in this action and is competent and qualified
23 to act as the receiver over the Collateral. The Court has exclusive authority over the Receiver.
24

1 The Receiver shall not be subject to the control of any other parties to this matter, but shall be
2 subject only to the Court's direction in the fulfillment of the Receiver's duties.

3 A. At all times until the Receiver is discharged by the Court, the Receiver shall
4 maintain errors and omissions insurance with a policy limit of at least \$500,000.00 per claim.

5 B. The Receiver shall file with the Court and serve on all parties in interest a monthly
6 report of the receivership's operations and financial affairs. The Receiver shall file each report not
7 later than 30 days after the end of a reporting period, which reporting period shall be each calendar
8 month. The Receiver must file and serve his initial report by no later than 60 days after the date of
9 entry of this Order.
10

11 **2. INCORPORATION OF OREGON RECEIVERSHIP CODE.** The Oregon
12 Receivership Code (the "**Receivership Code**"), which was approved by the Oregon Legislature
13 and subsequently signed by the Governor on June 14, 2017 and became effective on January 1,
14 2018 is expressly incorporated herein by this reference. To the extent of any inconsistency
15 between the terms, conditions and requirements of this Order and the terms, conditions and
16 requirements of the Receivership Code, the Receivership Code shall control.

17 **3. SUBJECT TO APPLICABLE LAW THAT EXCLUDES CERTAIN TYPES**
18 **OF COLLATERAL, ALL BANK LOAN COLLATERAL IS HEREBY PLACED IN THE**
19 **POSSESSION OF THE RECEIVER, AND UNDER THE COURT'S CONTROL,**
20 **PENDING FURTHER ORDERS OF THE COURT.** The Receiver, as an officer of this Court,
21 shall have and take possession, custody and control, either physically or constructively as
22 determined by the Receiver in his, her or its sole and absolute discretion, and subject to all existing
23 and valid liens, claims and encumbrances of secured or lien creditors (including all liens and
24

1 claims of Bank) of the Bank Loan Collateral, and any and all rents, income, profits or proceeds of
2 the Bank Loan Collateral (including but not limited to all cash, checks and credit card receipts),
3 both tangible and intangible and both choate and inchoate, whether now existing or after-acquired,
4 and any and all books and records related to the Bank Loan Collateral (hereinafter the
5 **“Receivership Estate”**).

6 The Receivership Estate includes, but is not necessarily limited to, the following types or
7 categories of personal property and real property assets of the Carleton Defendants, or in which
8 any or all of the Carleton Defendants have an interest, whether legal or equitable (but specifically
9 excluding (a) personal property of any individual Defendant that is used primarily for personal,
10 family or household purposes, (b) property of an individual Defendant that is exempt from
11 execution or process under laws of this state, (c) any power or interest that a person may exercise
12 solely for the benefit of another person, or (d) property held in trust for another person:

14 (a) all accounts, account receivables, contract rights, documents, documents of
15 title, payment intangibles, investment property, chattel paper, instruments, checking, savings and
16 all other deposit accounts;

17 (b) all inventory;

18 (c) all equipment;

19 (d) all fixtures;

20 (e) all farm products, including crops grown, growing or to be grown, livestock
21 born or unborn, supplies used or produced in the Carleton Defendants’ farming operation, and
22 products of crops and livestock in their unmanufactured state;

23 (f) all general intangibles, including all intellectual property;

24 (g) all deposit accounts, including any operating account at Bank;

(h) all investment property;

1 (i) all proceeds of any crop insurance, price support payment or other
2 government program;
3 (j) accessions, attachments and other additions to the Bank Loan Collateral;
4 (k) substitutes or replacements for any of the Bank Loan Collateral, all
5 proceeds, products, rents and profits of any of the Bank Loan Collateral, all rights under warranties
6 and insurance contracts covering the Bank Loan Collateral, and any causes of actions relating to
7 the Bank Loan Collateral; and

8 (l) books and records pertaining to any of the Bank Loan Collateral, including
9 but not limited to any computer-readable memory and any computer hardware and software
10 necessary to process such memory, whether kept by independent certified public accountants,
11 bookkeepers, and/or employees or contractors of the Carleton Defendants; and

12 The real property, fixtures and improvements and related property, including leases and
13 rents, described in the following recorded documents:

14 (a) That certain Deed of Trust dated May 2, 2016 and recorded in the Official
15 Records of Klamath County, Oregon on May 5, 2016, as Instrument No. 2016-004564;

16 (b) That certain Assignment of Rents dated May 2, 2016 and recorded in the
17 Official Records of Klamath County, Oregon on May 5, 2016, as Instrument No. 2016-004565;

18 (c) Two separate Agricultural Security Agreements dated May 2, 2016,
19 between Carleton Farms, Richmond Carleton, James Carleton, and Gregory Carleton and Bank
20 with the security interests described therein perfected by filing one or more UCC Financing
21 Statements with the Oregon Secretary of State's office and by recording a UCC Financing
22 Statement relative to the certain personal property collateral described therein in the Official
23 Records of Klamath County, Oregon on May 5, 2016, as Instrument No. 2016-04566, which was
24 subsequently amended pursuant to the terms of a UCC Financing Statement recorded in the
Official Records of Klamath County, Oregon on April 13, 2017, as Instrument No. 2017-003855;

1 (d) That certain Modification of Deed of Trust dated June 15, 2016 and
2 recorded in the Official Records of Klamath County, Oregon on July 1, 2016, as Instrument No.
3 2016-006974;

4 (e) That certain Second Modification of Deed of Trust dated June 26, 2017 and
5 recorded in the Official Records of Klamath County, Oregon on August 3, 2017, as Instrument No.
6 2017-008754;

7 (f) That certain Modification of Assignment of Rents dated June 26, 2017 and
8 recorded in the Official Records of Klamath County, Oregon on August 3, 2017, as
9 Instrument No. 2017-008755; and
10

11 (g) That certain Third Modification of Deed of Trust dated June 26, 2017 and
12 recorded in the Official Records of Klamath County, Oregon on October 6, 2017, as Instrument
13 No. 2017-011381.

14
15 **4. POWERS AND DUTIES OF RECEIVER WITH RESPECT TO THE**
16 **RECEIVERSHIP ESTATE.** With respect to the Receivership Estate, the Receiver is granted all
17 powers and is charged with all duties granted or imposed by the Receivership Code, including but
18 not limited to the following powers and duties:

19 A. To enter upon and take possession, custody and control of the Receivership Estate,
20 whether tangible or intangible, and all income, proceeds and profits thereof, with the power and
21 authority to preserve, protect, and liquidate those assets and to distribute the proceeds thereof to
22 the party or parties legally entitled thereto;

23 B. To seize and collect any and all funds or other assets which constitute income,
24 proceeds or profits of the Receivership Estate, in whatever form and wherever located, including

1 but not limited to any and all cash, deposits, accounts, bank accounts, other cash accounts or cash
2 equivalents, and lock box funds, and to change the signatory authority on all such accounts related
3 to the Receivership Estate, with the power and authority to distribute such income, proceeds or
4 profits to the party or parties legally entitled thereto;

5 C. To present or otherwise process for payment any checks, money orders, credit card
6 receipts or payments or other forms of payment made payable to the Carleton Defendants, or any
7 of them, which constitute rents, profits, income, or proceeds of the Receivership Estate, endorse
8 the same and collect the proceeds thereof, such proceeds to be held, used and maintained as
9 elsewhere provided herein;
10

11 D. To open and utilize bank accounts for receivership funds relating to the
12 Receivership Estate, with such funds to be held in a federal insured financial institution with an
13 office in Boise, Idaho;

14 E. Subject to further requirements of this Order and any requirements of the
15 Receivership Code, and in the Receiver's business discretion, to hire, employ or contract with
16 third parties to access computer files related to the Receivership Estate, which are password
17 protected or not otherwise readily accessible to the Receiver;
18

19 F. To have and collect all rents, income, proceeds or other profits generated by or
20 from the Receivership Estate, and to deposit the same into one or more bank or other financial
21 accounts controlled by the Receiver;

22 G. To take any and all other actions with respect to the Receivership Estate, including
23 managing its employees (if any), assets, vendors, creditors, debtors, tenants, customers and third-
24 parties which in the Receiver's business discretion the Receiver finds to be reasonably necessary

1 and prudent to preserve and protect the Receivership Estate, and to avoid any diminution or
2 impairment to the value of the Receivership Estate, which may include, but is not limited to, the
3 following:

4 1. Expending any cash or other income generated from the Receivership
5 Estate;

6 2. Paying for maintenance and operating expenses and taxes;

7 3. Prosecuting and defending legal actions in respect of the Receivership
8 Estate;

9 4. Subject to the requirements of this Order and any requirements of the
10 Receivership Code, employing attorneys, accountants, investigators, consultants, and any other
11 persons or entities deemed necessary by the Receiver to assist the Receiver in the discharge of the
12 Receiver's duties under this Order, with the costs of such services to be paid out of the
13 Receivership Estate in the ordinary course of business as and when invoiced, so long as the fees
14 charged for such services are deemed by the Receiver to be usual and customary;

15 5. The Receiver shall give notice to Bank, Defendants and all other interested
16 parties of the fees to be paid and expenses to be reimbursed to the Receiver and its professionals
17 on a monthly basis, and shall be authorized to make such payments unless the Receiver receives a
18 written objection within fourteen (14) days of such notice. If an objection is received, the
19 Receiver may pay any fees and reimburse any expenses not subject to objection, and may
20 promptly file a motion with the Court to have such objection heard and ruled upon;

21 6. Subject to and limited by any contrary requirements set forth in the
22 Receivership Code, purchasing such merchandise, materials, supplies, and services as the Receiver
23
24

1 deems necessary and advisable to assist the Receiver in performing the Receiver's duties
2 hereunder, and to pay therefore the ordinary and usual rates and prices in the ordinary course,
3 *provided, however*, that the Receiver shall obtain the prior approval of the Court after appropriate
4 notice to parties in interest for any singular transaction which will cost the Receivership Estate
5 more than \$10,000.00;

6 7. Subject to and limited by any contrary requirements set forth in the
7 Receivership Code, transferring, disposing of, selling and/or abandoning any tangible or
8 intangible assets of the Receivership Estate, including but not limited to any accounts, contract
9 rights, documents, documents of title, payment intangibles, investment property, chattel paper,
10 instruments, deposit accounts, inventory, equipment, farm products (including crops grown,
11 growing or to be grown, supplies used or produced in farming operations, and products of crops in
12 their unmanufactured state), general intangibles (including all intellectual property as defined in
13 the Bank Loan Documents), trade secrets, trade processes and business lines, *provided, however*,
14 that the Receiver shall obtain the prior approval of this Court after appropriate notice to parties in
15 interest respecting the proposed terms of any such dispositions if the aggregate book value or
16 market value of the same is reasonably believed by the Receiver to be greater than \$10,000.00;

17 8. Investigating the Receivership Estate and, in the Receiver's business
18 discretion, preparing such additional report or reports (beyond those required by this Order) that
19 the Receiver determines to be necessary and proper;

20 9. Subject to and limited by any contrary requirements set forth in the
21 Receivership Code, entering into or modifying contracts affecting any part or all of the
22 Receivership Estate, including, without limitation, employment contracts, independent contractor
23
24

1 agreements, leases, daily rental agreements, and service agreements, *provided, however*, that the
2 Receiver shall obtain the prior approval of this Court after appropriate notice to parties in interest
3 respecting the proposed terms of any such contracts or modifications of such contracts if the
4 aggregate costs of the contracts or the modifications over their term are reasonably expected by the
5 Receiver to be greater than \$10,000.00, and *provided further, however*, that subject to the
6 foregoing dollar limitation the Receiver shall not be required to seek or obtain any prior approval
7 of this Court prior to entering into any sales transactions involving farm products (including cattle,
8 crops grown, growing or to be grown, supplies used or produced in farming operations, and
9 products of crops in their unmanufactured state) so long as the terms of any such sales transactions
10 are determined by the Receiver in the Receiver's business discretion to be usual and customary
11 and in the ordinary course of the Carleton Defendants' business;

12
13 10. Subject to and limited by any contrary requirements set forth in the
14 Receivership Code, paying and discharging out of the funds and assets coming into the hands of
15 the Receiver all of the costs and expenses of the Receivership Estate, including all taxes,
16 governmental assessments and charges lawfully imposed upon the Receivership Estate, *provided,*
17 *however*, that the Receiver shall obtain the prior approval of the Court after appropriate notice to
18 parties in interest for any singular transaction or expense which will cost the Receivership Estate
19 more than \$25,000.00;

20
21 11. Applying for, obtaining, and paying any reasonable fees for any lawful
22 license, permit or other governmental approval relating to the Receivership Estate; confirming the
23 existence of and, to the extent permitted by law, exercising the privileges of any existing license or
24 permit; and doing all things necessary to protect and maintain such licenses, permits and

1 approvals, subject to the further provisions of this Order;

2 12. Hiring, firing, selecting and retaining employees and independent
3 contractors as the Receiver deems reasonable or necessary to preserve and maintain the value of
4 the Receivership Estate;

5 13. Notifying all federal and state taxing and applicable regulatory agencies in
6 accordance with any applicable laws imposing this duty, including 26 U.S.C. § 6036;

7 14. Presenting or recording a certified copy of this Order to all appropriate
8 governmental entities as proof of the Receiver's authority hereunder;

9 15. The Receiver may issue demand that the U.S. Postal Service grant exclusive
10 possession and control of mail, including postal boxes, as may have been used by Carleton
11 Defendants and may direct that certain mail related to the Bank Loan Collateral be re-directed to
12 the Receiver;

13 16. In discharging its above duties, the Receiver may avoid administering
14 unsecured claims or providing notice to unsecured creditors or filing a plan of distribution if, in the
15 Receiver's business judgment, no purpose would be served thereby; and

16 17. The Receiver is authorized to seek the assistance of the County Sheriff or
17 other law enforcement officials as necessary or proper to preserve the peace and protect the
18 Receivership Property, the Bank Loan Collateral, and to enforce this Order. The Sheriff of
19 Klamath County, Oregon, is hereby authorized and directed to assist in the enforcement of the
20 terms of this Order as may be requested by the Receiver. The Sheriff of every other county in the
21 state of Oregon is similarly authorized and directed to assist in the enforcement of the terms of this
22 Order as may be requested by the Receiver to the extent any of the Receivership Property is found
23 Order as may be requested by the Receiver to the extent any of the Receivership Property is found
24

1 or located in said county and/or to the extent any person holding any portion of the Receivership
2 Property or otherwise failing to comply with the terms of this Order is found or located in said
3 county.

4 **5. RECEIVER COMPENSATION AND OTHER MATTERS.** The Receiver
5 shall:

6 A. Be compensated in the ordinary course of business at the rate of \$275.00 per hour
7 for Matthew McKinlay, plus the prevailing hourly rates, which shall not exceed \$275.00 per hour,
8 for all Advanced CFO project managers, associates and staff, which rates will be subject to annual
9 increases of not more than ten percent (10%) per year on January 1 of each calendar year while
10 this receivership remains open, plus actual out of pocket expenses reimbursable at cost with no
11 markup, for services as Receiver herein; *provided, however*, that any such compensation paid to
12 the Receiver for such services shall be subject to the notice and approval provisions set forth in the
13 Receivership Code and this Order;

14 B. Retain originals and/or legible electronic copies of all writings and other documents
15 which were used or referred to in order to prepare the statements under the foregoing paragraphs
16 of this Order, including, but not limited to, checks, contracts, agreements, and invoices.

17 C. Subject to the requirements for the employment and compensation of professionals
18 found in the Receivership Code, nothing in this Order shall preclude the Receiver from hiring
19 professionals and third-party providers or vendors to assist the Receiver in the performance of the
20 Receiver's duties under this Order, so long as the fees charged for such services are deemed by the
21 Receiver in the Receiver's business discretion to be usual and customary in the locality where the
22 services are to be found, and any compensation for such services are subject to subsequent review
23
24

1 and approval of this Court after appropriate notice to parties in interest.

2 Subject to the Carleton Defendants cooperating with the Receiver in good faith, during the
3 first sixty days of the Receivership Estate the Receiver is authorized to pay the Carleton
4 Defendants, in the aggregate, the sum of \$10,000.00 per month (two months) in consideration for
5 their cooperation in providing information to the Receiver regarding the location and status of all
6 Bank Loan Collateral, all records relating to the Bank Loan Collateral, and such other information
7 as may be requested by the Receiver. The first monthly payment shall be due within five (5)
8 business days of the effective date of this Order and one-half of the second monthly payment be
9 due and payable on the thirtieth (30th) day following the effective date of this Order with the
10 remaining one-half of the second monthly payment becoming due and payable on the sixtieth
11 (60th) day following the effective date of this Order. Thereafter, to the extent one or more of the
12 Carleton Defendants provides services to the Receivership Estate upon the express request of the
13 Receiver, the Carleton Defendants, in the aggregate, shall be compensated at the rate of \$275.00
14 per hour for such services, plus actual out of pocket expenses reasonably incurred reimbursable at
15 cost with no markup, *provided, however*, that any such compensation paid to the Carleton
16 Defendants for such services and reimbursement of actual expenses shall be subject to the notice
17 and approval provisions set forth in the Receivership Code and this Order.
18

19 **6. FURTHER POWERS GRANTED TO RECEIVER.** The Receiver is further
20 empowered and authorized to generally do such other things as may be necessary or incidental to
21 the specific powers, directions, and general authorizations set out in this Order, including any and
22 all actions permitted or authorized by the Receivership Code or Oregon common law, and may
23 take any further actions relating to the Receivership Estate that are necessary and appropriate to
24

1 fulfill the Receiver's duties hereunder beyond the scope contemplated by the provisions set forth
2 above, *provided however*, that the Receiver obtains the prior approval from this Court for any such
3 additional actions after appropriate notice to parties in interest.

4 **7. GRANT OF IMMUNITY.** To the fullest extent allowed by law, and except as
5 may otherwise be provided under the Receivership Code dealing with the personal liability of a
6 receiver, the Receiver and the Receiver's agents, attorneys, consultants and employees, shall be
7 immune from and shall be held harmless from and against any and all suits, liabilities, claims,
8 losses, lawsuits, judgments, and/or expenses, including but not limited to attorney fees', costs and
9 monetary damages, arising out of or related to, either directly or indirectly, his, her, it's or their
10 performance of duties or obligations pursuant to the terms of this Order.

11 **8. RECEIVERSHIP LOANS AND ADVANCES.** If the Receivership Estate does
12 not generate sufficient revenue following the appointment of the Receiver sufficient to pay the
13 operating expenses and approved charges and expenses of the Receiver and the fees and expenses
14 of any attorneys, accountants, or other professionals employed by the Receiver in accordance with
15 the requirements of this Order, the Receiver may and is hereby authorized without further order of
16 the Court to borrow money from Bank in order to pay such expenses. All funds borrowed from
17 the Bank shall be deemed to be borrowings of the Carleton Defendants under one or more loans
18 and related security documents described in the Amended Complaint and Motion as determined by
19 the Bank in its sole discretion, and said borrowings shall be added to the balance due and owing
20 under the applicable loan(s) and secured by the Bank Loan Collateral. The Receiver may execute,
21 issue and deliver (but is not required to do so to effectuate the prior sentence) in favor of Bank one
22 or more promissory notes or other instruments and documents evidencing the additional
23
24

1 indebtedness with respect to all sums borrowed by the Receiver on behalf of the Carleton
2 Defendants. All sums advanced by Bank to the Receivership Estate pursuant to this Order,
3 together with interest thereon at the rates set forth in the applicable loan documents, shall be
4 secured by Bank's existing liens on and security interests in the Bank Loan Collateral, and
5 otherwise shall constitute a first and senior lien with respect to all such assets exclusive of first
6 priority purchase money security interests and first priority statutory liens in favor of other named
7 Defendants. In addition, all funds that the Receiver borrows from Bank shall be deemed
8 administrative expenses of the Receivership Estate. The Receiver, however, shall bear no
9 obligation or responsibility for repayment of any such loans or advances.
10

11 **9. FILING OF TAX RETURNS FOR THE DEFENDANTS.** Notwithstanding any
12 other term or provision of this Order, the Receiver shall be under no obligation to file any tax
13 returns or other governmental returns or forms for or on behalf of the Defendants. Upon
14 reasonable notice to the Receiver, the Receiver shall provide to the Defendants and their
15 authorized representatives reasonable access to financial information necessary for the Defendants
16 to prepare and file such governmental returns or forms.

17 **10. PAYMENTS TO BANK.** Notwithstanding any other provisions of this Order, the
18 Receiver may distribute to Bank as soon as reasonably practicable all surplus cash of the
19 Receivership Estate, not reasonably necessary for the operation and administration of the
20 Receivership Estate (including any reserves the Receiver believes are appropriate), as well as all
21 income, profits and proceeds resulting from the sale of the Bank Loan Collateral upon which Bank
22 has a lien or security interest, after such notice and hearing as may be required by this Order or the
23 Receivership Code. Bank shall apply all distributions received from the Receiver to the
24

1 outstanding indebtedness due Bank from the Carleton Defendants under the terms of the
2 promissory notes, security agreements, assignment of rents, trust deed and related loan agreements
3 described in the Amended Complaint and the Motion.

4 **11. FURTHER ORDERS.** The Receiver or the parties hereto may at any time apply to
5 this Court for any further orders or other instructions and powers necessary to enable the Receiver
6 to perform its duties properly. Any motion by the Receiver or the parties hereto for Court
7 approval of any act of the Receiver shall be served on each party hereto and each other person who
8 has filed and served on the Receiver a request for special notice. Further, the Receiver may file
9 requests for special notice on behalf of any party; however, such requests filed by the Receiver
10 shall not be deemed consents to the jurisdiction of this Court. In addition to service by mail or
11 hand-delivery, service in this action may be made by facsimile or electronic mail.

12 Notwithstanding any provision of this Order requiring Court approval of any act of the Receiver,
13 the Receiver may nonetheless undertake an action without prior Court approval if the Receiver
14 obtains the written consent of each party hereto and each other person who has filed and served on
15 the Receiver a request for special notice. Such acts shall, as soon as practicable thereafter, be
16 identified to the Court.
17

18 **12. RESTRAINING ORDER/NON-INTERFERENCE WITH RECEIVER.** It is
19 hereby further ordered that Defendants, and each of them, and any other parties with actual or
20 constructive notice of this Order who are subject to the jurisdiction of this Court, including,
21 without limitation, Defendant's agents, servants, employees, attorneys, and other persons and
22 entities acting in concert or participation with them, or any of them, are hereby enjoined and
23 restrained from, directly or indirectly, transferring, selling, leasing, disposing of, encumbering,
24

1 injuring, converting, gifting or otherwise interfering with the Bank Loan Collateral without Bank's
2 express prior written consent and the written consent of the Receiver, or further Order of the
3 Court, including but not limited to from taking or engaging in the following actions:

4 A. Interfering, directly or indirectly, with the Receiver or the Receiver's custody and
5 control of the Receivership Estate, including, without limitation, withholding access codes and
6 computer passwords;

7 B. Interfering, directly or indirectly, with the Receiver's effort to collect or take
8 possession of the Receivership Estate, or the rents, income, profits or proceeds thereof;

9 C. Collecting or attempting to collect the Receivership Estate, or the rents, income,
10 profits or proceeds thereof, other than at the written direction of the Receiver;

11 D. Extending, dispersing, transferring, assigning, selling, conveying, devising,
12 pledging, mortgaging, creating a security interest in or disposing of the whole or any part of the
13 Receivership Estate or the rents, income, profits or proceeds thereof, without the prior written
14 consent of the Receiver;

15 E. Taking any actions which would damage or dissipate the assets of the Receivership
16 Estate; and/or
17

18 F. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or
19 prejudice the preservation of the Receivership Estate and the rents, income, profits or proceeds
20 thereof, or this Court's jurisdiction over the Receivership Estate.
21

22 Furthermore, the Carleton Defendants, and all of them, shall (subject to the remainder of
23 this Section 12):

24 A. Within five (5) business days of the effective date of this Order, deliver to the

1 Receiver all Bank Loan Collateral, and all income, proceeds, rents and profits received from the
2 Bank Loan Collateral;

3 B. Within five (5) business days of the effective date of this Order, supply the
4 Receiver with information necessary to enable the Receiver to complete any schedules that the
5 Receiver may be required to file, and otherwise assist the Receiver in the completion of the
6 schedules;

7 C. Within five (5) business days of the effective date of this Order, provide the
8 Receiver with all books and records referring or relating to the Bank Loan Collateral;

9 D. Within five (5) business days of the effective date of this Order, provide the
10 Receiver with copies of such financial and business records of the Carleton Defendants as the
11 Receiver may request; and
12

13 E. Submit, by and through their most knowledgeable representatives, to an
14 examination by the Receiver or Bank, under oath and subject to penalty of perjury, concerning the
15 acts, conduct, property, liabilities and financial condition of or concerning the Receivership Estate,
16 or any matter relating to the Receiver's administration of the Receivership Estate;

17 PROVIDED HOWEVER, that if Carleton Defendants, or any of them, are after reasonable
18 diligence unable to fully perform any or all of the above items by the stated deadlines, the party or
19 parties responsible for such performance shall not be deemed in violation of this Order so long as
20 such party or parties commence performance within the stated period (or with reasonable
21 promptness as to item E) and diligently prosecute the same to completion.
22

23 **13. UTILITY SERVICES.** Any utility company providing services to the
24 Receivership Estate, including gas, electricity, water, sewer, trash collection, telephone,

1 communications or similar services, shall be prohibited from discontinuing service to the
2 Receivership Estate for any non-payment by the Carleton Defendants prior to the Receiver's
3 appointment by this Court based upon unpaid bills incurred by the Carleton Defendants. Further,
4 such utilities shall transfer any deposits held by the utility to the exclusive control of such Receiver
5 and shall be prohibited from demanding that the Receiver deposit additional funds in advance to
6 maintain or secure such services. To the extent the Receiver deems it prudent in the Receiver's
7 business discretion, the Receiver may, but shall not be required to, open new utility accounts in the
8 name of the Receivership. Utility companies are prohibited from discontinuing service while the
9 new Receivership accounts are in process of being established.
10

11 **14. AUTOMATIC STAY.** The automatic stay of certain proceedings imposed by
12 Section 22 of the Receivership Code shall be in effect upon entry of this Order except as to Bank
13 including, without limitation, the continuance of the above-entitled action or any other action or
14 proceeding brought by Bank to enforce its rights under the loan and security documents related to
15 the Bank loans described in the Amended Complaint.

16 Further, except as expressly authorized herein or under the Receivership Code, no person
17 or entity shall file suit against the Receiver or its agents or professionals, or take other action
18 against the Receiver or its agents or professionals, without an order of this Court permitting the
19 suit or action after appropriate notice to parties in interest, *provided, however*, that no prior court
20 order is required to file a motion in this action to enforce the provisions of this Order or any other
21 order of this Court in this action and, *provided, further*, that nothing set forth herein shall preclude
22 or prejudice any party from asserting claims in this proceeding, provided that adjudication of such
23 claims shall be subject to any agreements executed by or affecting any party. All defenses to such
24

1 claims are reserved and unaffected by this paragraph.

2 To the extent the Court allows any such litigation against the Receiver or its agents or
3 professionals to proceed, the costs and expenses of defending such litigation may be paid from the
4 Receivership Estate, except to the extent that the Court expressly determines otherwise in the order
5 authorizing such litigation. Further, Bank shall indemnify the Receiver for and hold the Receiver
6 harmless from any and all actions, causes of action, claims, costs, damages, liabilities, or expenses,
7 including reasonable attorney fees (collectively, “**Claims**”) incurred by the Receiver by reason of,
8 during, and/or arising from its appointment and service as receiver, except to the extent that they
9 arise from the Receiver’s bad faith, gross negligence, willful malfeasance, reckless disregard of
10 duty or fraud, excluding any Claims to the extent same are covered and satisfied by insurance.

11 The Receiver shall promptly provide Bank with written notice of any Claims, litigation or other
12 proceedings under which the Receiver shall request a defense and/or indemnification. If and to the
13 extent that Bank agrees to defend and/or indemnify the Receiver as requested, Bank shall have the
14 exclusive right to (a) select counsel and any other professionals to represent the Receiver and its
15 agents or professionals, and (b) settle, compromise or otherwise resolve any such Claims, litigation
16 or other proceedings. Further, the Receiver and its agents and professionals shall fully cooperate
17 with Bank and Bank’s professionals with respect to any such defense or indemnification matters.
18

19 **15. TURNOVER.** It is hereby further ordered that Defendants, and any other parties
20 with actual or constructive notice of this Order who are subject to the jurisdiction of this Court,
21 including, without limitation, Defendant’s managers, officers, directors, employees, agents,
22 representatives, attorneys and consultants, and all persons or entities acting for or in concert with
23 them, shall:
24

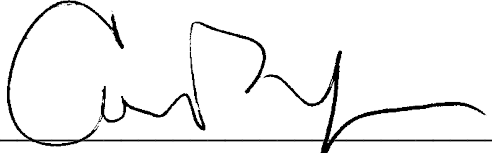
1 A. Turn over to the Receiver the Bank Loan Collateral that is included in the
2 Receivership Estate, the rents, income, profits and proceeds there from, and all other property
3 incidental thereto or that is or may be necessary or useful to allow and assist the Receiver in
4 operating or in collecting the property and assets of and relating to the Receivership Estate,
5 including, but not limited to, all mail and other correspondence, all post office boxes, all keys to
6 all locks, and the contracts, records, books of account, ledgers, files and all business records for
7 the Bank Loan Collateral or the Receivership Estate or the rents, income, profits or proceeds
8 thereof, wherever located and in whatever mode maintained (including, without limitation,
9 information contained on computers and any and all software relating thereto as well as all
10 banking records, statements and canceled checks); and

12 B. Turn over to the Receiver all documents which constitute or pertain to all contracts,
13 leases, subleases, royalty agreements, assignments, insurance policies, liens, security interests,
14 licenses, permits or governmental approvals, or other agreements of any kind whatsoever, whether
15 currently in effect or lapsed, which relate to the Bank Loan Collateral or the Receivership Estate or
16 any interest therein, or to the rents, income, profits or proceeds there from.

17 **16. DISCHARGE OF RECEIVER.** The Receiver may at any time file a motion
18 requesting that the Receiver be exonerated, discharged and/or released from the Receiver's
19 appointment under this Order. Such motion may be heard by the Court on no less than five (5)
20 business days' notice. The receivership shall not be terminated, and the rights and obligations of
21 the parties subject to this Order shall remain in full force, until this Court approves the Receiver's
22 final report or until the Court enters an order terminating the receivership and discharging the
23 Receiver.
24

1 **17. EFFECTIVE DATE OF ORDER.** This Order shall be effective when signed
2 and upon the posting of the Receiver's Bond in the amount of \$250,000.00 as required by the
3 terms of this Order.

Signed: 2/2/2018 10:33 AM



Circuit Court Judge Cameron F. Wogan

8 Submitted by:
9 Bradley S. Copeland, OSB No. #871964
10 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2018, I served the following MOTION FOR TURNOVER by depositing in the United States mail at Medford, Oregon full and complete copies thereof, by first class mail, postage prepaid, or email transmission where indicated, addressed to the following:

Carleton Farms
PO Box 462
Tulelake CA 96134

Les Schwab Tire Center
Ponda Maden, Credit Dept
PO Box 567
Merrill, OR 97633-0567

Twenty Largest Unsecured Creditors:

Baley Trotman Farms
Mark Trotman, Partner
PO Box 417
Malin, OR 97632-0417

McAuliffe , John C
John C. McAuliffe
PO Box 404
Malin, OR 97632-0404

Bank of America
Accounts Receivable
PO Box 15796
Wilmington, DE 19886-5796

Northcutt, Les
Les Northcutt
PO Box 479
Malin, OR 97632-0479

Butler Machine
Scott Seus, Owner
2284 County Road 100
Tulelake, CA 96134-8269

Pacific Power
Accounts Receivable
PO Box 26000
Portland, OR 97256-0001

Davis Hearn Anderson & Turner
Chris Hearn
515 E Main St
Ashland, OR 97520-2113

Pape Machinery Exchange
Christy Rose White
PO Box 5077
Portland, OR 97208-5077

DHH of Oregon Company, LC
Dave Hill
1255 Jordan Creek Pkwy
West Des Moines, IA 50266-2344

R & J Auto Repair
Rod Green, Owner
137 E Front St
Merrill, OR 97633-9723

ED Staubs & Sons
Brad Staub
PO Box 488
Klamath Falls, OR 97601-0339

SAIF Corporation
Accounts Receivable
400 High St SE
Salem, OR 97312-0700

Jesse D. Hickey Farms LLC
Jesse Hickey, Owner
PO Box 358
Merrill, OR 97633-0358

Stateline Auto Parts, Inc.
Jeff Story
PO Box 260
Merrill, OR 97633-0260

JMC Enterprises
Joel Micka
900 E Chemical Dr
Kennewick, WA 99336-5973

Umpqua Bank
Terri Hamlin, Special Assets
PO Box 1820
Roseburg, OR 97470-0417

Lien Holders:

Umpqua Bank
c/o Bradley S Copeland
Arnold Gallagher PC
PO Box 1758
Eugene OR 97440

Umpqua Bank
c/o Cort O'Haver
President & CEO
445 SE Main St.
Roseburg, OR 97470

AGCO Finance LLC
PO Box 2000
Johnston IA 50131

Basin Fertilizer
& Chemical Co., LLC
P.O. Drawer X
Merrill OR 97633

Deere & Company
6400 NW 86th St
Johnston LA 50131

Hill, Drew
18827 Hill Rd.
Klamath Falls OR 97603

Industrial Ventilation Inc.
723 E Karcher Road
Nampa ID 83687

Irrigation Rentals, Inc.
P.O. Box 297
Red Bluff CA 96080

Walker Bros
Clint Walker
PO Box 1206
Anderson, CA 96007-1206

Winema Elevators LLC
Clark Gill, General Manager
PO Box 848
Tulelake, CA 96134-0848

Worden Elevator LLC
Shane Broiler
20201 Highway 97 S
Klamath Falls, OR 97603-9595

Receiver

Advanced CFO Solutions
Attention: Matthew McKinlay
13601 West McMillan Road, Suite 102,
PMB 320
Boise, Idaho 83713

Jeffrey C. Misley
Sussman Shank LLP
1000 SW Braodway, Suite 1400
Portland, OR 97205

I hereby certify that on April 12, 2018, I determined from the United States Bankruptcy Court electronic case filing system that the following parties will be served electronically via ECF:

KEITH BOYD ecf@boydlegal.net, arnold@boydlegal.net
DOUGLAS R RICKS vbcservicedougr@yahoo.com, doug@vbcattorneys.com
US Trustee, Eugene USTPRegion18.EG.ECF@usdoj.gov
ROBERT J VANDEN BOS vbcservice@yahoo.com, sara@vbcattorneys.com

THE LAW OFFICES OF KEITH Y. BOYD

By: /s/ Lin Engelhorn
Lin Engelhorn, Legal Assistant